

**Before the  
Federal Communications Commission  
Washington D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Inter-carrier Compensation Regime	)	
	)	CC Docket No. 01-92
T-Mobile <i>et al.</i> Petition for Declaratory Ruling	)	
Regarding Incumbent LEC Wireless Termination Tariffs	)	
	)	

**OPPOSITION OF ALLTEL CORPORATION**

ALLTEL Corporation (“Alltel”), through its counsel, hereby opposes the Petition for Reconsideration (“Petition”) filed by the Missouri Small Telephone Company Group (“Missouri LECs”) in the above-captioned proceeding.<sup>1</sup> The Missouri LECs seek to expand the opt-in obligations imposed on local exchange carriers as set forth in §252(i) of the Act to wireless carriers.<sup>2</sup> Alltel opposes the Petition because Congress clearly and explicitly exempted wireless carriers from Section 252(i) obligations. Furthermore, granting the Missouri LECs’ Petition would inhibit fruitful negotiations between ILECs and wireless carriers governing the pricing and terms of physical interconnection and would result, contrary to the Commission’s rules, in a reciprocal compensation rate that would not reflect either party’s costs.

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<sup>1</sup> See *Public Notice Petitions for Reconsideration of Action in Rulemaking Proceeding*, CC Docket No. 01-92 (released May 25, 2005).

**I. Congress Clearly and Explicitly Excluded Wireless Carriers From Section 252 Obligations, Including the Opt-In Obligations.**

Congress clearly excluded wireless carriers from the LEC obligations imposed by Section 252 of the Act, including the opt-in provisions. Section 252(i) of the Act reads that a “*local exchange carrier* shall make available any interconnection, service or network element . . . to any other requesting *telecommunications carrier* upon the same terms and conditions as those provided in the agreement.” *See 47 U.S.C. §252(i)* (italics added). Congress further explicitly excluded wireless carriers from the definition of local exchange carrier (“LEC”) stating that the term LEC “does not include a person insofar as such person is engaged in the provision of a commercial mobile radio service under Section 332(c).” *See 47 U.S.C. §153(26)*. The Act was intentionally structured by Congress to provide wireless carriers the benefit of the flexibility accorded to telecommunications carriers under Section 251(a) to seek compensation and interconnection arrangements outside of the 252 obligations imposed on local exchange carriers.

The directive from Congress is clear, explicit and unambiguous. The obligations set forth in Section 251(c) and Section 252 of the Act are applicable solely to LECs and cannot be extended to wireless providers. Alltel agrees with the Petitions for Reconsideration filed in this docket that assert the Commission

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<sup>2</sup> Petition at 1.

may have exceeded its authority by subjecting wireless carriers to the obligations set forth in §252.<sup>3</sup> The Commission has previously reached the same conclusion, noting that because the definition of LEC does not include wireless carriers, wireless carriers are not subject to the obligations of Section 251(c).<sup>4</sup> The Commission should limit its ruling in this matter to require wireless carriers to negotiate reciprocal compensation arrangements at the request of the ILECs without imposing the additional obligations of §252 on the CMRS industry. *See RCA PFR at 7.*

**II. Granting the Petition Would Inhibit Private Negotiations and Would Result in Reciprocal Compensation Rates That Would Not Reflect Either Party's Costs.**

Existing reciprocal compensation agreements between wireless carriers and LECs are the result of negotiations that take into account a multitude of factors such as the rate itself, the volume of traffic between the parties and their specific network interconnection designs. Allowing rural LECs to opt into an agreement that may have no relationship to the factors underlying the agreement, or that may otherwise not reflect the requirements specific to either the CMRS carrier or the LEC, would deter and inhibit future negotiations. The Commission has tentatively concluded that private negotiations produce better

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<sup>3</sup> *See Rural Cellular Association*, Petition for Clarification or, in the Alternative, Reconsideration at 9 (“RCA PFR”).

<sup>4</sup> *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, DA 96-325 (released August 8, 1996) at ¶1006 (“FR&O”, “Local Interconnection Order”).

results than regulation.<sup>5</sup> The Missouri LECs, on the other hand, seek to impose additional regulatory burdens on wireless providers, rather than relying on negotiated agreements.

In the Local Interconnection Order, the Commission concluded that the ILECs' costs would be a reasonable proxy for the costs incurred by other telecommunications carriers for the termination of traffic. Therefore, the pricing of the existing reciprocal compensation agreements is based on the costs of the ILEC rather than the wireless provider. *See FR&O ¶1085; see also 47 CFR 51.711*. As a result, wireless carriers could have several agreements within a state containing different reciprocal compensation rates resulting from the different costs of terminating traffic to the various LECs that are parties to the agreements. If the Commission grants the Petition, the opt-in rates would not be based either on the costs of the LEC or the wireless carrier. This anomaly is not supported by the Commission's rules requiring reciprocal compensation rates to be based on the forward-looking costs of the incumbent LEC. *Id.* Furthermore, granting the Petition would result in yet another form of regulatory arbitrage, because the LECs opting into an existing agreement would likely select the highest reciprocal compensation rates, thus negating the need to provide support for the costs of terminating traffic to their network.

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<sup>5</sup> See *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for IS-Bound Traffic*, CC Dockets 96-98, 99-68, FCC 99-38 (released February 26, 1999) ("As a general matter, we tentatively conclude that our rule should strongly reflect our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts." at ¶28).

The comments recently filed in the Intercarrier Compensation Reform proceeding clearly demonstrate that the predominant view of the industry favors commercial agreements over regulation. Instead of expanding regulatory requirements to wireless carriers, the Commission should promote and encourage commercial negotiations. Imposing opt-in requirements on wireless carriers would be a step backward that would inhibit rather than promote commercial negotiations.

### **III. Conclusion**

Granting the Missouri LECs' Petition would violate the clear, explicit and unambiguous intent to exempt wireless carriers from Section 251/252 obligations and would violate the Commission's interconnection rules by hindering the parties incentive to achieve commercially negotiated agreements. Rather, favorable action on the Petition would promote the rote adoption of reciprocal rates not reflective of either party's costs. Accordingly, Alltel respectfully requests that the Commission deny the Missouri LECs' Petition and clarify that wireless carriers are not subject to the opt-in obligations imposed on LECs under Section 252(i) of the Act.

Respectfully submitted,

ALLTEL Corporation

By: \_\_\_\_\_/s/\_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

I, Glenn S. Rabin, Vice President and Federal Communications Counsel of ALLTEL Corporation, hereby certify that on June 30<sup>th</sup>, 2005, the foregoing “Opposition of ALLTEL Corporation” was served on all parties listed below by U.S. mail, first class, postage prepaid.

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